

REC'D TN
REGULATORY AUTH.



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Patrick Turner
Attorney

September 11, 2000 THE
EXECUTIVE SECRETARY

VIA HAND DELIVERY

David Waddell, Executive Secretary
Tennessee Regulatory Authority
460 James Robertson Parkway
Nashville, TN 37238

Re: Notice of Proposed Rulemaking to Amend Rules 1220-4-11 et seq.
Concerning Regulations of Certain Telemarketing Practices
Docket No. ~~99-00645~~ 00-00522

Dear Mr. Waddell:

Enclosed are the original and thirteen copies of the Comments BellSouth Telecommunications, Inc. Regarding Proposed Amended Rules. Copies of the enclosed are being provided to counsel of record for all parties.

Very truly yours,

Patrick W. Turner

PWT:ch
Enclosure

**BEFORE THE
TENNESSEE REGULATORY AUTHORITY
Nashville, Tennessee**

REC'D TN
REGULATORY AUTH.

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IN RE:

**NOTICE OF PROPOSED RULEMAKING)
TO AMEND RULES 1220-4-11 et seq.)
CONCERNING REGULATIONS OF)
CERTAIN TELEMARKETING PRACTICES)**

OFFICE OF THE
EXECUTIVE SECRETARY

00-00522

Docket No. 99-00645

**COMMENTS OF BELL SOUTH TELECOMMUNICATIONS, INC.,
REGARDING PROPOSED AMENDED RULES**

BellSouth Telecommunications, Inc. ("BellSouth") respectfully submits the following comments on the proposed amended Rules 1220-4-11 et. seq. entitled "Regulations of Certain Telemarketing Practices" ("Proposed Rules").

I. Proposed Rule 1220-4-11-.02(5)

In order to bring this rule into compliance with applicable state and federal law, BellSouth suggests revising Rule 1220-4-11-.02(5) to read as follows:

If a local exchange company or interexchange carrier becomes aware that a telephone solicitor, as defined in Chapter 4 of Title 65 of the Tennessee Code Annotated, is in violation of subsection (4) of this rule, such company or carrier shall inform the Authority of such violation. Upon order of the Authority, such company or carrier shall take the necessary action to disconnect the network element or service being used by the telephone solicitor in violation of subsection (4) of this rule.

As written, the proposed rule prohibits local exchange companies and interexchange carriers from providing any network element or service to telephone solicitors "that would block or otherwise interfere with on a per line basis, the display of the telephone solicitor's name and telephone number on the residential

subscriber's caller ID equipment." As a practical matter, however, BellSouth has no way of knowing whether or not a given customer is a telephone solicitor. Additionally, a customer that is not a telephone solicitor when it purchases such elements or services may later become a telephone solicitor without BellSouth's knowledge. Thus the provisions of this proposed rule are impossible to implement.

More importantly, this proposed rule is contrary to the state statutes it purports to implement. These statutes simply provide that "[n]o person or entity who makes a telephone solicitation to the telephone of a residential subscriber in this state shall knowingly utilize any method to block or otherwise circumvent such subscriber's use of a caller identification service." T.C.A. §65-4-403. These provisions do not prohibit a telephone solicitor from blocking the caller ID function of: (1) any person who is not a residential subscriber; (2) any residential subscriber who is not being solicited; and (3) any residential subscriber outside the state of Tennessee. Thus by purporting to prohibit any "telemarketing company" from blocking the caller ID function on any call it places, the proposed rule goes well beyond the provisions of state statutes.

Additionally, the statutory prohibitions apply to persons or entities making telephone solicitations, not to telecommunications services providers. The rule, therefore, punishes a telecommunications service provider for selling approved services and network elements on the basis of the concern that another person or

entity may use the services or network elements in violation of state law.¹ As such, the rule violates the "do not call" statutes which explicitly state that "No provider of telephone caller identification service shall be held liable for violations of this part committed by other persons or entities." T.C.A. §65-4-407 (emphasis added).

Finally, with limited exceptions, the FCC's rules require BellSouth to "recognize *67 dialed as the first three digits of a call . . . as a caller's request that the CPN (calling party number) not be passed on an interstate call." See 47 C.F.R. §64.1601(b). These rules go on to say that

No common carrier subscribing to or offering any service that delivers CPN may override the privacy indicator associated with an interstate call. Carriers must arrange their CPN-based services, and billing practices, in such a manner that when a caller requests that the CPN not be passed, a carrier may not reveal that caller's number or name, nor may the carrier use the number or name to allow the called party to contact the calling party.

Thus in addition going beyond the scope of the authority granted by state statutes, the literal provisions of the rule are in conflict with this federal mandate.

The revised language proposed above alleviates these legal and practical concerns while recognizing the policy concerns that underlie the language of the proposed rule. BellSouth, therefore, urges the TRA to accept BellSouth's suggested revision to this rule.

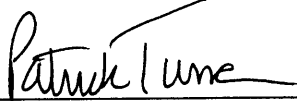
¹ This is analogous to proscribing the sale of crowbars based on the supposition that some persons may use them to force open locked doors and windows. The remedy obviously is to prosecute the wrongdoer – not to prohibit the sale of approved services and network elements.

II. Proposed Rules 1220-4-11-.02(7) & .07(2)

BellSouth has reviewed and agrees with Section 1 of the written comments submitted by the Tennessee Association of Realtors.²

Respectfully submitted,

BELLSOUTH TELECOMMUNICATIONS, INC.

A handwritten signature in black ink, appearing to read "Patrick W. Turner", is written over a horizontal line.

Guy M. Hicks

Patrick W. Turner

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² This is not to imply that BellSouth disagrees with any other section of the Comments filed by the Tennessee Association of Realtors. BellSouth simply takes no position on such other sections.